E/1994/32
E/C.10/1994/14

United Nations

Commission on Transnational Corporations

Report on the twentieth session
(2-11 May 1994)

Economic and Social Council
Official Records, 1994
Supplement No.12

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United Nations • New York, 1994

NOTE

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0252-0141

SUMMARY

The importance of foreign direct investment and transnational corporations as the integrating agents of the world economy - as witnessed by their role in current flows of capital, finance, trade, technology and labour - continued to grow. Investment flows in 1993 reached $185 billion and world-wide stock of foreign direct investment increased to $2.2 trillion.

Foreign direct investment to developing countries reached $50 billion in 1992 and some $80 billion in 1993, the developing countries outpacing the developed countries in terms of the rate at which foreign direct investment inflows grew. As a result, developing countries accounted for an increasing share of world-wide investment flows (37 per cent in 1993). Major factors behind this trend included good economic performance, the implementation of privatization policies and the opening of equity markets. It was likely that the growth of foreign direct investment to developing countries would be sustained in the context of increasing globalization and integrated international production.

The least developed countries did not participate at all in the growth of foreign direct investment to developing countries. African countries were making efforts to attract foreign direct investment, especially through the liberalization of policies, and a number of them had succeeded in attracting sizeable flows.

Topical issues

The dramatic growth in world-wide foreign direct investment flows during the 1980s was accompanied by little growth in employment in transnational corporations. Nevertheless, 73 million people were employed directly by transnational corporations and their foreign affiliates - and many more in activities linked to them through forward or backward linkages. International production might contribute to employment opportunities, not so much by the increasing of employment directly in the short run, as through higher efficiency and the strengthening of competitiveness.

Many developing countries were increasingly interested in fostering competition and improving productivity in their service industries, and, towards that end, had begun to open their markets to foreign service providers. In liberalizing the services sector, it was important to carry out reform at the level of "service complexes" as constituting groups of interrelated services.

With respect to technical assistance activities, it was noted that the mere revision of the foreign investment law, per se, was not sufficient. Other factors that impacted on the overall investment climate included the appropriateness of fiscal, financial and other macroeconomic policies and the efficiency, quality and effectiveness of the administration in marketing the country and handling foreign investment applications. Entrepreneurship development and assistance to small- and medium-sized enterprises were made explicit objectives of the future work of the Programme on Transnational Corporations.

Future of the Commission

To reflect the broadening focus on international investment, the Commission recommended that it be renamed the Commission on International Investments and Transnational Corporations, under the Trade and Development Board. The Commission should be a forum for the exchange of views and experience among Governments, business, intergovernmental organizations, non-governmental organizations, trade unions and experts on issues relating to foreign direct investment and the creation of an enabling environment for private sector and enterprise development.

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Chapter I

MATTERS CALLING FOR ACTION BY THE ECONOMIC AND SOCIAL COUNCIL OR BROUGHT TO ITS ATTENTION

A. Draft resolution

1. The Commission on Transnational Corporations recommends to the Economic and Social Council the adoption of the following draft resolution:

Integration of the Commission on Transnational Corporations into the institutional machinery of the United Nations Conference on Trade and Development

The Economic and Social Council,

Recalling its resolution 1993/49 of 29 July 1993,

Bearing in mind the report of the Commission on Transnational Corporations on its twentieth session, 1/

Recognizing the need for improved efficiency and effectiveness within the United Nations system in addressing international investment issues and recognizing that such improvements are attainable through improved rationalization of both United Nations intergovernmental meetings and Secretariat resources,

Decides to recommend to the General Assembly the adoption of the following draft resolution:

The General Assembly,

Reaffirming its resolution 47/212 B of 6 May 1993, adopted within the context of the ongoing restructuring of the United Nations in the economic and social fields, and endorsing the Secretary-General's decision to consolidate all activities related to transnational corporations within the United Nations Conference on Trade and Development,

Recognizing the key role of international investment, as well as the role of other international market-driven capital flows, in the promotion of global economic growth and development,

Affirming the unique value to the international community of United Nations intergovernmental deliberations on such issues,

Recognizing the need for improved efficiency and effectiveness within the United Nations system in addressing international investment issues and recognizing that such improvements are attainable through improved rationalization of both United Nations intergovernmental meetings and Secretariat resources,

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1/ To be issued as Official Records of the Economic and Social Council, 1994, Supplement No. 12 (E/1994/32).

Considering the 1993 relocation of the Transnational Corporations and Management Division of the former Department of Economic and Social Development of the United Nations Secretariat to the secretariat of the United Nations Conference on Trade and Development as the Division on Transnational Corporations and Investment,

Bearing in mind the work of the Commission on Transnational Corporations over its past twenty sessions and that, in recent years, the activities of the Commission have placed greater emphasis on the contribution of transnational corporations to economic growth and development, strengthening cooperation between host developing countries and transnational corporations, facilitating flows of foreign direct investment, and exploring linkages among capital flows, technology dissemination and acquisitions, and trade in goods and services, as well as the fact that this shift has resulted in an increase in the number of elements common to the Commission's activities and those of the Trade and Development Board and its subsidiary bodies,

Mindful of the need to avoid unnecessary duplication of work among United Nations bodies,

Bearing in mind Economic and Social Council resolution 1913 (LVII) of 5 December 1974, including its paragraphs 3 and 4, the document entitled "A New Partnership for Development: The Cartagena Commitment", 2/ adopted by the United Nations Conference on Trade and Development at its eighth session, held in February 1992, and General Assembly resolution 47/183 of 22 December 1993, in which the Assembly reaffirmed the important role of the United Nations Conference on Trade and Development, inter alia, as the most appropriate focal point within the United Nations for the integrated treatment of development and interrelated issues in key areas, including trade, commodities, finance, investment, services and technology, in the interests of all countries, particularly those of developing countries,

1. Decides that the Commission on Transnational Corporations should become a commission of the Trade and Development Board and be renamed the Commission on International Investment and Transnational Corporations;

2. Requests the Trade and Development Board to address urgently the question of orienting the programme of work of the Commission on International Investment and Transnational Corporations on the basis of recommendations made by the Commission on Transnational Corporations at its twentieth session that the Board should orient the work in such a way as to attract attendance of relevant senior public sector officials, whenever possible, as well as private sector representatives, and that the work should include:

(a) Promoting the exchange of views and experience among interested Governments, businesses, intergovernmental organizations, non-governmental organizations, trade unions and experts on issues relating to international investment, transnational corporations and the creation of an enabling environment for private sector and enterprise development;

(b) Reviewing and providing guidance to the Secretariat with regard to its research activities and the provision of information on policies, programmes and developments related to international investment and transnational corporations

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2/ Proceedings of the United Nations Conference on Trade and Development, Eighth Session, Cartagena de Indias, Colombia, Report and Annexes (United Nations publication, Sales No. E.93.II.D.5), part one, sect. A.

and the creation of an enabling environment for private sector and enterprise development;

(c) Reviewing and providing guidance to the Secretariat on technical assistance to Governments interested in developing investment regimes and enabling environments so as to attract more foreign investment and support for enterprise developments, thereby contributing to economic growth and development of host countries;

3. Requests the Secretary-General to restore in full the resources of the Programme on Transnational Corporations as originally allocated in the proposed programme budget for the biennium 1994-1995 and in accordance with General Assembly resolution 48/228 A;

4. Invites Member States and interested parties to increase financial support for technical cooperation, consultative and advisory services, training, research and information activities in the field of foreign investment;

5. Decides that the Commission will keep under review the work of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, whose next session is to be held in Geneva in the first half of 1995;

6. Also decides that the next session of the Commission should be held in Geneva in the first half of 1995.

B. Draft decision

2. The Commission on Transnational Corporations also recommends to the Economic and Social Council the adoption of the following draft decision:

Report of the Commission on Transnational Corporations on its twentieth session and provisional agenda and documentation for the twenty-first session of the Commission

The Economic and Social Council:

(a) Takes note of the report of the Commission on Transnational Corporations on its twentieth session; 1/

(b) Approves the provisional agenda and documentation for the twenty-first session of the Commission as set out below:

1. Election of officers.

2. Adoption of the agenda and organization of work.

3. Recent developments in international investment and transnational corporations.

   Reports by the UNCTAD secretariat.

4. Country and regional experiences in attracting foreign direct investment for development.

Reports by the UNCTAD secretariat.

5. Implementation of the programme on international investment and transnational corporations.

Report by the UNCTAD secretariat on the activities of the programme on international investment and transnational corporations.

Report by the UNCTAD secretariat on experience gained in technical cooperation.

Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its thirteenth session.

6. Adoption of the report of the Commission on its twenty-first session and provisional agenda for the twenty-second session of the Commission.

C. Matters brought to the attention of the Council

3. The following decision adopted by the Commission is brought to the attention of the Council:

Decision 1994/101. Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) on its twelfth session

The Commission on Transnational Corporations decided, with regard to the draft resolutions contained in the report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) on its twelfth session: 1/

(a) To take no action on draft resolution I, entitled "Enlargement of the Intergovernmental Working Group of Experts on ISAR";

(b) To adopt draft resolution II, entitled "Financial arrangements for the annual session of the Group";

(c) To adopt draft resolution III, entitled "Structure and resources to fulfil the mandate of the Group", as orally amended;

(d) To adopt draft resolution IV, entitled "Strengthening the coordinating role of ISAR in the fields of accounting and reporting";

(e) To postpone action on draft resolution V, entitled "Establishment of a subgroup of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting".

1/ E/C.10/1994/12.

Chapter II

TRANSNATIONAL CORPORATIONS IN THE WORLD ECONOMY AND TRENDS IN FOREIGN DIRECT INVESTMENT IN DEVELOPING COUNTRIES IN PARTICULAR, INCLUDING THE INTERRELATIONSHIP OF INVESTMENT, TRADE, TECHNOLOGY AND DEVELOPMENT

1. The Commission considered item 3 of its agenda at the 1st to 4th meetings on 2, 3 and 4 May 1994. It had before it the following documents:

(a) Report by the UNCTAD secretariat on trends in foreign direct investment (E/C.10/1994/2);

(b) Report by the UNCTAD secretariat on transnational corporations and employment (E/C.10/1994/3).

2. In his opening statement, the Assistant Director, Research and Policy Analysis Branch of the Division on Transnational Corporations and Investment of the United Nations Conference on Trade and Development, stated that transnational corporations were both cause and effect of rapid changes in the world economy. He observed that in the early 1990s, the universe of transnational corporations had comprised some 37,000 parent firms and 200,000 affiliates - a significant increase in comparison with the 7,000 or so transnational corporations that had been based in the major home countries in 1970. He attributed part of the increase to the transnationalization of firms from developing countries as well as of small- and medium-sized enterprises, but emphasized the importance of the largest transnational corporations for the world economy. The 100 largest companies by foreign assets had accounted for one third of the world-wide stock of foreign direct investment and controlled $3.3 trillion in global assets in 1991, of which an estimated $1.3 trillion represented assets outside their home countries. The Assistant Director noted that after a decline in world-wide outflows in 1991 and 1992, investment flows had recovered in 1993 to $185 billion; and that the world-wide stock of foreign direct investment continued to increase, reaching $2.2 trillion in 1993. Moreover, he emphasized that there had been a continued rise of foreign direct investment to developing countries amounting to $50 billion in 1992 and about $70 billion in 1993 - a level that exceeded world-wide inflows in 1985. As a result, developing countries accounting for an increasing share - 37 per cent in 1993 - of world-wide investment flows. Strikingly, foreign direct investment currently accounted for a larger share of gross domestic capital formation in developing countries than in developed countries. Indicators were encouraging as regards the ability of developing countries to continue to maintain or increase their volumes of foreign direct investment. Improved growth prospects, good economic performance, and enabling policy frameworks arising from greater macroeconomic stability, privatization and liberalization, as well as regional integration schemes that expanded market opportunities and the scope for further expansion of foreign direct investment in services, were important contributory factors towards sustaining foreign direct investment flows to developing countries.

3. The Assistant Director emphasized that the growing pressures of those trends enhancing globalization and integrated international production had been associated, in many minds, with the persistence of high levels of unemployment. Employment by transnational corporations had grown along with foreign direct investment flows and stock, but at a considerably lower rate. Transnational corporations were estimated to employ some 73 million persons at home and

abroad, an amount that represented only 2-3 per cent of the world's labour force, but they accounted for about one fifth of paid employment in non-agricultural activities in developed and developing countries, and moreover, generated considerable indirect employment. Moreover, transnational corporations typically provided higher-paying and more attractive jobs, on average, than domestic firms, reflecting their industrial distribution, productivity differences and corporate strategies. Integrated international production had further reinforced the higher-wage and higher-skill profile of transnational corporations, contributing to increased competition among Governments to attract and retain transnational corporation activities. There was, however, no significant link, in his view, between increased international production and higher unemployment in the developed countries. In particular, the relocation of jobs to developing countries compared with the total labour force in developed countries remained quite limited for several reasons: first, labour costs were only one factor determining the location of production in developing countries and, also, differences in labour costs across developed and developing countries were, to a considerable degree, offset by parallel differences in labour productivity; second, to the extent that a shift in production occurred from developed countries to the group comprising developing countries and those of central and Eastern Europe, it typically involved an incremental process in which new production facilities were established in the countries in that group; and, finally, the bulk of foreign direct investment was in services, and most foreign direct investment in this sector was location-bound, given the still limited tradability of services. All those factors suggested that although international production was a key factor in the wider process of industrial restructuring at the global level, its effects on the growth and distribution of employment were limited, and that macroeconomic and cyclical factors, technological changes and labour-market inflexibilities were the most important influences on the growth and distribution of employment. The Assistant Director cautioned that although low labour costs could still be a locational advantage for foreign direct investment in developing countries, countries could only hope to maintain their levels and growth of foreign direct investment and related employment by investments in education and skill enhancement and encouragement of transnational corporations to invest in more technology-intensive processes and products. The enhanced growth and employment opportunities associated with integrated international production - owing to changing structures of national specialization - required a long-term perspective from policy makers at both national and international levels. He concluded that in that context, greater cooperation might be required both among Governments and between Governments and the private sector.

4. All delegations took note of the recent trend towards increased flows of foreign direct investment to developing countries coupled with decreased flows to the developed countries which had resulted in an unprecedented 37 per cent share of world flows for developing countries in 1993 They attributed the increase in flows to developing countries to economic factors, including robust expansion and higher returns on investment, as well as policy reform which had created ample opportunities for foreign direct investment and transnational corporation participation in their economies, including in sectors previously closed to transnational corporations. Some delegations from developing countries outlined the liberalization measures that had taken place in their economies including, among others, revision of laws and regulations relating to foreign direct investment, removal of impediments to the free functioning of a market economy, and privatization, as well as removal of bureaucratic hurdles to foreign investment. Delegations agreed that transnational corporations were both cause and effect of development. They played an important role in economic

development and growth by easing capital shortage, disseminating know-how and technology and stimulating competition through trade and foreign investment.

5. A number of delegations addressed the issue of the continued growth of foreign direct investment in the world economy in the context of expected recovery in world economic performance and growth and continuing structural changes in the world economy. The resurgence of growth in developed countries could contribute to renewed expansion of foreign direct investment in those countries. At the same time, the increasing importance of services in the domestic economies of developed countries might involve a further shift to developing countries of manufacturing production in industries in which the latter enjoyed a comparative advantage, resulting in further changes in the pattern of foreign direct investment flows. Some concerns were raised about the implications of the increased mobility of capital across national borders - brought about in recent times by financial deregulation and privatization - in terms of the increased vulnerability of the world economy to large and rapid movement of financial resources across the globe.

6. Some delegations from the transitional economies of Central and Eastern Europe outlined developments in their countries' policies with respect to foreign direct investment as well as broader policy changes for shifting towards a market-oriented system. They stated that the legal framework for liberalization and privatization offered significant opportunities for private enterprise including transnational corporations. The delegations mentioned that their Governments provided similar treatment to transnational corporations and national firms. They referred to recent experience with respect to foreign direct investment flows. One delegation from an economy in transition mentioned that continued efforts to improve the investment framework had yielded results, and that the majority of transnational corporations investing in his country were small- and medium-sized enterprises, mainly from the European Union and the European Free Trade Area. Another delegation referred to the limited success that his country had had in attracting foreign direct investment thus far, despite liberalization and privatization and the availability of a skilled labour force. It was stated that the work of the Programme on Transnational Corporations on foreign direct investment was useful in enabling a better assessment of the contributions of transnational corporations. One delegation called for the organization of workshops on foreign investment and privatization that could be useful for countries in transition.

Box 1. Foreign direct investment trends and prospects

At the second meeting, on 2 May 1994, the Commission held an informal panel discussion on recent trends in foreign direct investment. Presentations were made by two expert advisers, Ms. Sylvia Ostry, Chairperson, Centre for International Studies, Toronto, and Mr. Sanjaya Lall, Lecturer, University of Oxford. The experts focused on the remarkable growth of investment flows to developing countries (particularly in East and South-East Asia and Latin America) alongside the decline of investment flows to developed countries. Ms. Ostry found it too early to tell whether the above pattern was sustainable in the longer run. Structural changes and reforms would be important determinants of foreign direct investment in developing countries. The developed countries, for their part, had experienced shocks in the 1990s - of a much more profound and pervasive nature than the oil shock at the end of the 1970s and the beginning of the 1980s - that were likely to influence foreign direct investment in and from these countries. Ms. Ostry cited factors that had contributed to the recent shocks: the bursting of the assets price "bubble" in the United States of America and, more recently, in Japan; the reunification of Germany; profound technological advances, especially in information and communication technologies, on the restructuring of manufacturing; the increasing role of the services sector; and the changing nature of the enterprise ("organovation"). Ms. Ostry noted, however, that notwithstanding those recent shocks the United States was on a new growth trajectory and that there were some developing and Central and Eastern European countries whose economies were increasingly converging with those of the United States, Japan and Europe in terms of per capita incomes and productivity through technology, trade and investment flows. However, countries of the Middle East and Africa that remained outside the "convergence club" faced increasing marginalization - a trend that could not be ignored in an interdependent world economy. A regional approach to infrastructure development and aid might be required to allow countries lagging behind to "leap-frog" the process of development in order to catch up with the rest of the world. Ms. Ostry also mentioned that foreign direct investment and relocation of industry had implications for employment, and that the issue of social dumping that had emerged in recent policy discussion had implications for the "twin" flows of trade and foreign direct investment.

Mr. Lall addressed the issues of sustainability of foreign direct investment to developing countries, effects of an integrated international production system, investment flows to Africa and the least developed countries, and small- and medium-sized transnational corporations. Although the recent growth of foreign direct investment flows might be cyclic in nature and determined by business conditions in home and host countries, there were also structural factors that had provided the impetus to recent growth in developing countries. The large size of China as well as that country's rapid pace of economic growth and the recent opening of South Asia provided considerable scope for upward adjustment in the foreign direct investment levels of that region. According to Mr. Lall, the issue of the sustainability of foreign direct investment to developing countries required qualification. On the one hand, structural factors, economic growth and policy reforms in developing countries, as well as their increasing competitiveness, were likely to ensure that the level of foreign direct investment in those countries could be sustained. However, sustaining their present share of world-wide investment flows might be difficult if flows to developed countries rebounded with economic recovery in those countries. He noted, however, that there might be countervailing factors such as intra-developing country foreign

direct investment which was particularly significant in Asia and would likely spread to Latin America and perhaps Africa, especially if South Africa could be a magnet for foreign direct investment and an engine for growth for the region. On the subject of recovery of flows to the developed countries, Mr. Lall noted that although a certain shifting comparative advantage from developed to developing countries existed in some industries, there were new industries in which developed countries were developing new comparative advantages. These new and emerging industries in the developed countries might not be labour-intensive and might thus contribute to greater structural unemployment.

Mr. Lall also touched on the effects of an internationally integrated production system. He emphasized that there were different forms of integration - of corporate functions (production, marketing, technologies) but also across companies in the form of strategic alliances - with both forms leading to the shrinking of the economic space. Although the large firms stood to benefit most from the integrated production system, developing countries could also benefit, depending on a number of factors: the presence of an enabling framework for foreign direct investment, the openness of regimes on trade and labour migration, the existence of advanced infrastructure and strong technological capabilities - the cornerstone of industrial competitiveness - harnessed by supporting research and scientific institutions and education and training. With respect to foreign direct investment in Africa and the least developed countries, Mr. Lall indicated that despite the fact that most of the countries concerned had liberalized their foreign direct investment regimes and undertaken structural economic reforms, and in spite of the existence of the lowest wage costs in manufacturing, those countries had attracted little foreign capital in the form of foreign direct investment and portfolio investments. Political uncertainty, economic instability and structural problems ranging from poor infrastructure, to small (sometimes underpopulated) and fragmented domestic markets and weak industrial capabilities, combined with limited regional integration, explained why foreign direct investment in those countries continued to be concentrated in natural resource industries instead of higher-value-added manufacturing. Although political uncertainty and economic instability could be resolved by policy measures, structural problems that impeded industrial competitiveness took longer to be resolved and involved the development of local entrepreneurship, investments in training in science and technology, the establishment of local support industries and improvement of infrastructure. Finally, Mr. Lall noted that small- and medium-sized transnational corporations were a dynamic source of growth and employment in developing countries and of innovation in developed countries. The greater problems that these firms faced in transnationalization owing to their small size (lack of information, capital shortages and access to support systems) necessitated special efforts to promote their foreign direct investment.

7. Some delegations referred to factors that were conducive to sustainability of foreign direct investment flows to developing countries. Among the factors that were likely to lead to increasing foreign direct investment in those countries were continued prospects for higher growth and improvements in the economic climate, economic reforms, including privatization of state-owned enterprises and openness towards foreign direct investment, structural changes, including a shift of some manufacturing production from developed countries, and the growth of intra-developing country foreign direct investment. Higher returns to investment in developing countries compared with developed countries also contributed to the attractiveness of the former for foreign investment. The strong link between trade and foreign direct investment made the latter susceptible to regional trading arrangements and the sustainability of these investments therefore depended on developments in trade relationships among countries. Efforts on the part of Governments to make their domestic economies more efficient, less wasteful and more productive would free up resources for investment purposes, including foreign direct investment.

8. Several delegations drew attention to the heterogeneity of experience and the caveats that needed to be noted regarding the growth of foreign direct investment to developing countries. Many least developed countries and countries in africa had not participated in the surge of foreign direct investment and might have even fallen behind. These disparities were part of the general problem of structural imbalance in the world economy, including growing gaps between the least developed and other countries in terms of output, trade and investment. Delegations drew attention to the instabilities that existed in some of the most attractive locations for foreign direct investment in developing countries, fostered in part, by income inequalities. Reference was also made to the potential for inflationary pressures and for shortages of skilled labour in countries with dynamic growth and foreign direct investment performance.

Box 2. The Commission on Transnational Corporations at twenty and its future role

At the third meeting of the Commission, held on 3 May 1994, a panel of experts was assembled to discuss the contribution of the Commission since its inception in 1974 and its likely direction over the coming decade in the light of the rapidly changing world economy and needs of countries. The panellists included Ms. Sylvia Ostry, Mr. Peter Frerk, a member of the Board of Management of Volkswagen AG (stock corporation) and a former expert adviser to the Commission on Transnational Corporations, Mr. Sanjaya Lall, and Ms. Lilia Bautista, Permanent Representative of the Philippines to the United Nations in Geneva and former Governor of the Philippine Board of Investments.

All the panellists agreed that the Commission provided a valuable forum for policy makers and the corporate community, commended the Commission on the high standards of debate over important policy issues and had unreserved praise for the quality of research output and technical assistance provided by the UNCTAD secretariat under the Commission's guidance. There was also broad agreement that the issues covered by the Commission had increased rather than decreased in importance over the last two decades and that an increasingly interdependent world economy would present many new challenges over the coming decade.

The panellists provided a provocative overview of the emerging challenges of a new world economy. Ms. Ostry predicted a continuation of the trend towards deeper economic integration through transnational corporations and foreign direct investment and sketched a new growth dynamic for the world economy based on the creation and transfer of intangible assets such as technology, skills and knowledge. However, these developments also presented profound economic and political challenges due, inter alia, to the juxtaposition of the relocation of industry and a high rate of unemployment in developed countries. Ms. Ostry predicted that the post-cold war era would be one of growing frictions between economic rather than political systems and foresaw a danger of protectionism, cartelization and marginalization of large parts of the world's population. One disturbing trend was the extension of the idea of reciprocity beyond the traditional area of trade to that of investment. National and international policy frameworks were ill equipped to confront these problems and would require a new focus on linkages and better coordination among existing international regulatory institutions. Mr. Frerk complimented many of Ms. Ostry's observations from the perspective of transnational corporations. At the corporate level, fundamental changes in business strategy emphasizing research and development, innovation and the need to establish group alliances were creating a new environment both for the transnational corporation and for small- and medium-sized enterprises. Those changes reinforced the importance of the traditional determinants of foreign direct investment such as the reliability of the legal system, a sound macroeconomic environment and political stability. He predicted increased regional and national competition for foreign direct investment and suggested that the resulting frictions could best be managed through existing international organizations such as the International Labour Organization (ILO), the World Trade Organization (WTO) and UNCTAD. Mr. Frerk observed that although the issues of underemployment and human resource development, both of which urgently needed to be addressed by the international community, were ones requiring a traditional tripartite response, there was also a pressing need for new approaches, including from the Commission.

Mr. Lall saw a world of increasing opportunities opened, in part, by a more liberal policy environment and technological progress. There were, however, considerable differences across the developing world that would require specific policy responses. Those deserved the close attention of the Secretariat. Mr. Lall stated that the dynamic centre of the world economy had clearly shifted to the Asian region, including not only the newly industrializing countries but also the second-tier industrializers - such as Malaysia and Indonesia - and, perhaps most significantly, China. However, the rapid pace of change in that region was already creating infrastructural bottlenecks, particularly in education. Latin America had also experienced a genuine economic revitalization, but it was too early to tell how sustainable its growth path was. Mr. Lall noted considerable sectoral and regional imbalances in the pattern of growth and foreign direct investment in Latin America and, in contrast to the Asian region, a relative weakness of its industrial base. Mr. Lall also expressed optimism that the economies in transition could use their regional advantages to generate a sustainable growth path, and noted the increase of foreign direct investment in some higher-value-added sectors of those countries. However, the process had been extremely uneven. Finally, with respect to the least developed countries, particularly those in sub-Saharan Africa, Mr. Lall emphasized the urgency of a long-term and comprehensive development agenda, including efforts to increase foreign direct investment flows, to address structural imbalances in those countries.

Ms. Bautista brought her practical experience to bear on the question of attracting foreign direct investment to developing countries. Ms. Bautista reiterated that new opportunities were opening for transnational corporations in developing countries, from a revival of economic growth, the privatization of state-owned enterprises and more liberal foreign direct investment policy regimes. However, the new strategies being adopted by transnational corporations, the emergence of regional blocs and the increasing interdependence of trade, technology and foreign direct investment were all contributing to a more complex environment for developing-country policy makers, making technical assistance essential. Ms. Bautista emphasized that the links among sustainable development, technology transfer and transnational corporations would become areas of growing importance for the Commission over the coming decade and that in this and other areas the discussion of clear international rules and regulations governing transnational corporations and foreign direct investment should be continued at the Commission.

9. A number of delegations pointed out that it was difficult to establish a close link between foreign direct investment and employment. The contribution of transnational corporations lay not so much in creating employment per se, as in providing investments, disseminating technology, strengthening competitiveness and lowering prices. With respect to employment, their effects on employment quality and indirect employment generation were more important than those on the numbers of those directly employed. However, some delegates noted the positive contribution of foreign direct investment to employment in developing countries, particularly China, where employment in foreign affiliates had increased to 6 million by 1993. Reference was also made to the fact that liberal treatment of foreign direct investment inflows and outflows, coupled with sound macroeconomic policies and investments in labour quality, could maximize the effects on the employment and quality of labour. One delegation observed that it would not be correct to suggest, as had been done in the report on transnational corporations and employment, that foreign direct investment through mergers and acquisitions did not contribute to employment; the improvements in efficiency resulting from mergers and acquisitions could contribute to increased output and employment. One delegation stated that Governments should promote transnational corporation operations with harmonious social conditions. In that context, a social clause in international agreements was important even if it was viewed differently by different groups of countries. One developing country delegation referred to the constraints faced by developing countries, including his own, in providing rapidly increasing education and training, as required by transnational corporations upgrading their activities, and stated that transnational corporations should also provide training for their workers.

Box 3. Transnational corporations and employment

The Commission's deliberations under agenda item 3 included an informal meeting on transnational corporations and employment with a panel of experts comprising Mr. Gösta Karlsson, Secretary, Swedish Conference of Professional Employees and an expert adviser to the Commission; Mr. Duncan Campbell, Senior Research Officer, International Institute of Labour Studies, on deputation to ILO; and Mr. Roger Decosterd, an executive of Nestle, Ltd. The discussion addressed a number of issues related to the implications of international production and the trend towards increased cross-border integration of transnational corporations activities for employment and labour markets generally.

Mr. Karlsson observed that the implications of increased opportunities for relocation through transnational corporations were complex and could not be addressed without reference to national economic policies that were at the basis of the employment situation in countries. In recent years, the emphasis on supply-side policies and labour-market flexibility had been accompanied by relatively high levels of unemployment, and jobless growth in many developed countries. While relocation of activities by transnational corporations in pursuit of profits and market opportunities could create further problems in such an environment, policies to prevent such relocation were not the solution. However, if countries played off one side against the other in an effort to attract foreign direct investment for creating jobs, there might be an unnecessary downgrading of labour-market conditions.

Mr. Campbell expressed the view that on balance, expanded opportunities for relocation of economic activity through transnational corporations reflected an opportunity rather than a threat for developing host countries, although they were reducing opportunities for employment in low-skilled production in developed countries. At the same time, as companies became more fully integrated in their transnational activities, there was a wider dispersion of opportunities in both developed and developing countries and greater scope for specialization of different locations within firms' value-added chains. Opportunities for labour were also affected by the fact that many transnational firms now focused on their core activities and externalized the rest, creating employment opportunities in unrelated firms, as well as by the fact that through electronic communications, labour could be accessed without investments.

Mr. Decosterd emphasized the need to understand that transnational corporations generally had a long-term perspective and did not invest unless there were clear prospects for growth. Thus, wages, or the gap in general conditions relating to employment, were only one among several criteria for making investment decisions. The present situation with respect to comparative costs did, however, work to the detriment of developed countries from an employment perspective. In order to maintain production and sustain exports, developed countries had to resort to increased automation, further exacerbating unemployment. Mr. Decosterd drew attention to the fact that transnational corporations created opportunities not only by generating employment but also by creating better jobs and providing professional management training. He concluded that despite the limitations of transnational corporations with respect to employment generation in developed countries, there were interesting possibilities for creating employment in developing countries for expatriates from developed countries.

The experts agreed that the growing importance of technology and created assets in integrated international production had significant implications for labour and its employment. Comparative advantage in production currently depended much less on labour costs and much more on its quality. Labour was, indeed, being looked upon, especially in technology-intensive industry, more as an asset than as a cost. However, firms that needed to access labour, as well as resources, were driven by cost conditions and tended to be footloose as a result of integrated production strategies that separated consumption from production through a wider dispersal of functional activities. This suggested that labour-market flexibility continued to be an option. However, employment or development strategies based on labour-market flexibility were misplaced and likely to create instability. The important role for countries, in the context of the growing importance of created assets, lay in strengthening education and training.

In the discussion following the experts' presentations, there was a general confirmation of the importance of the employment issue for countries, and of the need for innovation in the area of employment, taking into account the vast changes that had taken place in labour markets and national and international economies and the anomaly that existed of tasks being available and people looking for work. Attention was drawn to the difficulties developing countries faced in retaining their attractiveness to foreign investors by combining high labour quality with low costs. It was affirmed that in addition to education and training through the formal education systems of countries, there should be a contribution by transnational corporations through the training, and upgrading of the skills, of the workers they hired.

10. Several delegations commented on policy issues relevant to transnational corporation participation, both in general and with respect to foreign direct investment. They agreed that the growth of private investments in general and foreign direct investment in particular in developing countries was attributable to the trend towards economic liberalization and deregulation in a large group of developing countries. There had been renewed emphasis on private markets' providing goods and services. As regards foreign investment policies, new laws governing international participation had created ample scope for foreign investment expansion. Governments increasingly viewed private enterprises and transnational corporations as positive factors for economic efficiency and growth. To that end, national policies should ensure sustained and higher rates of growth. Furthermore, investment in infrastructure development, support services, monetary and fiscal policies for stable macroeconomic conditions, and education and human resource development were necessary conditions for taking full advantage of the participation of transnational corporations. In addition, fair labour standards should be elaborated since they were a major criterion for foreign direct investment. Moreover, the liberalization of the economy should continue to further private investment and private initiative, including the foreign component, so as to enhance national output and employment.

11. Specific discussions arose on foreign direct investment policies. In particular, the costs and benefits of a focused versus a targeted approach in attracting foreign direct investment were discussed. The role of incentives and performance requirements was discussed as well as the broader issue of the competition among countries for foreign direct investment. The discussions centred on whether incentives constituted unnecessary spending on the part of countries and whether they distorted competition. One delegation expressed the

opinion that incentives did not distort competition as long as they were not combined with performance requirements. Another delegation noted that performance requirements were a disincentive to foreign direct investment and added to the costs of private firms.

12. While expressing appreciation for the excellent quality of the documentation provided under the agenda item, delegations drew attention to some areas leaving room for improvement. There should be a more comprehensive analysis of the factors that drove general foreign direct investment patterns and a more detailed description of the lack of comparability of cross-country data. In addition, there was a need to focus more fully on developments in the successor republics of the former Union of Soviet Socialist Republics and in Central and Eastern Europe which had not been reflected adequately in the report to the Commission.

13. In his concluding remarks, the Assistant Director, Research and Policy Analysis Branch of the Division for Transnational Corporations and Investment of UNCTAD, thanked the delegations for their comments and the rich discussion of the issues. While the discussion was too far-ranging for summary, he noted a few issues that deserved special attention. First, all delegations had commented on the growth of foreign direct investment to developing countries and viewed it as a positive and desirable development. Second, there was good reason to be optimistic regarding flows to developing countries, but the world market for foreign direct investment was competitive and shifting, and countries had to be vigilant. Third, the least developed countries needed assistance. He noted that the reason for increased flows of foreign direct investment to developing countries related to basic determinants such as the size and growth of markets, infrastructure development and the enabling framework. To the extent that foreign direct investment frameworks became similar, other factors assumed great significance; these included appropriate legal framework good governance, and a stable political and sound macroeconomic environment. Special attention needed to be given to human resource development and upgrading of employment. The Assistant Director observed that given that foreign direct investment flows to developing countries were increasing and that their importance was recognized, it was important that UNCTAD and other institutions be in a position to assist and advise developing countries.

Chapter III

ROLE OF TRANSNATIONAL CORPORATIONS IN SERVICES

1. The Commission considered item 4 of its agenda at the 5th and 6th meetings, on 4 and 5 May 1994. It had before it the report by the UNCTAD secretariat on experiences in the liberalization of foreign direct investment in services, entitled "Expansion of foreign direct investment and trade in services" (E/C.10/1994/4).

2. In introducing the item, the Assistant Director of the Research and Policy Analysis Branch of the Division on Transnational Corporations and Investment of UNCTAD stated that service activities constituted the single most important economic activity in all developed economies and the majority of developing economies, accounting on average for 47 per cent of gross domestic product (GDP) in developing countries and 61 per cent of GDP in developed countries, as well as for a steadily and rapidly growing share of employment in developed and most developing countries. This was reflected in the predominance of services in foreign direct investment. While international transactions in services markets could take place through any one of the following modes of delivery: cross-border trade, movement of consumers, movement of services providers and foreign direct investment, characteristically, services could not be transported and hence were difficult to trade at arm's length across borders. Foreign direct investment was thus the principal mode of delivering services abroad. This was reflected by the fact that approximately 50-60 per cent of foreign direct investment flows was in services and that about 40-50 per cent of the world-wide stock of foreign direct investment was in services.

3. The Assistant Director of the Research and Policy Analysis Branch also noted that developing countries had become keenly aware of the importance as export-earners of such services as tourism, labour services, harbour services, and transit-trade services, among others, as well as of the need to create an efficient pool of producer services as a requirement for competitive economic development. The Director stated that there was a growing body of evidence suggesting, contrary to conventional wisdom which saw growth in services mostly as a consequence of overall economic growth, that the development of service activities may not be a result of growth, but rather one of its preconditions. As a result, many developing countries were increasingly interested in fostering competition and improving productivity in their service industries and, towards that end, in opening their markets to foreign service providers. Experience regarding the benefits and costs of such an opening and the policy options for countries that wished to liberalize their services sectors, including the experience of a technical assistance project currently being implemented in selected developing countries, suggested that inefficiency in producer services entailed significant economic costs for developing countries. This in turn suggested that it would be useful to price the costs of inefficiencies as a first step in liberalizing the services sector, including foreign direct investment in services. Furthermore, to avoid policy conflicts within the services sector, it would be useful to carry out reform at the level of "service complexes" or groups of interrelated services. However, an optimal sequencing of policy reform in liberalizing services required that some attention be paid to macroregulatory issues prior to attempting reform at the level of particular service complexes. Complementary reforms, such as antitrust or competition policies, were essential for the effective implementation of a liberalization programme. This was particularly true with respect to foreign direct investment

in services where experience with competition was often even more limited than in goods industries.

4. Delegations taking the floor agreed that the issue of the role of services in economic development of developing countries was an important one, and that it was timely for the Commission and the Secretariat to address that issue, especially in light of the successful conclusion of the Uruguay Round of multilateral negotiations with a General Agreement on Trade in Services. They supported the findings of the report by the UNCTAD secretariat (E/C.10/1994/4) and found the experience of the UNCTAD/World Bank/United Nations Development Programme (UNDP) project and the lessons based on it, contained in the document, very useful. Several delegations also emphasized that the Secretariat's project on the "Expansion of foreign direct investment and trade in services" constituted a unique and pioneering effort - a good example of how research led to practical implementation of technical assistance in an area that was of importance to developing countries, and a welcome effort of coordination among international organizations.

5. All delegations agreed that the importance of services in the current world economy could no longer be overlooked. However, it was pointed out by several delegations that there was still a clear gap between developed and developing countries in the area of services development and trade in services, and that the backwardness of developing countries in this regard operated as a constraint on their economic development. It was also stated by several delegations that owing to economic, cultural, legal and social factors, and the relative backwardness of their services sectors, developing countries were constrained in their capacity to open up, and that this process should be implemented gradually and prudently. Economic reform, however, including as regards access of foreign service providers, should not be mistaken for deregulation, since regulation did not necessarily constitute protectionism. It was expressed that, in particular, recent privatization efforts in developing countries could result in a possible gap in regulation, which could then place developing countries and firms originating in those countries at a comparative disadvantage in an increasingly competitive global environment. One delegation observed that in this respect, in the Uruguay Round, the issue of domestic regulation had been a difficult one and pointed out that the General Agreement on Trade in Services as concluded (article VI) stated that regulatory measures such as licensing, standards and qualifications were legitimate for meeting certain domestic objectives.

6. While agreeing with the need for, and potential positive effects of, the liberalization of foreign direct investment and trade in services, several delegations pointed out that liberalization of services in developing countries should proceed cautiously, especially in the realm of financial services. One delegation, quoting its own and other countries' experience, stated that liberalization of the financial sector ought to be postponed until effective control over fiscal and supervisory systems had been established, in order to avoid accelerated outflows of capital. In the liberalization process, a balance should be found that would ensure the ability of developing countries to develop an indigenous banking system, while at the same time allowing for appropriate foreign presence. The need to develop indigenous capacity in the financial services sector in developing countries was stressed by several delegations.

7. The issue of unilateral versus multilateral liberalization was raised by several delegations. One delegation expressed the view that multilateral negotiations should not stifle liberalization on the basis that desired reciprocal concessions had not been secured, since the undertaking of bound commitments in multilateral negotiations would none the less secure concessions

or credit for such liberalization, inasmuch as offers to undertake bound commitments would become grounds for return concessions. However, the rationale for liberalization should not be equated with such narrow short-term objectives. While one delegation emphasized that in order to ensure reciprocity and the balance of costs and benefits in trading arrangements, equitable reciprocity in the area of services needed to be ensured to increase the participation of developing countries in services trade, another delegation stated that domestic regulation of international service transactions should be based on the most-favoured-nation principle and not on that of reciprocity. Some delegations stressed the need for international disciplines that would ensure that domestic regulatory measures did not constitute unnecessary barriers to trade in services. In this respect, it was also pointed out that domestic reforms should be accompanied by an effective competition policy, so as to ensure that restrictive business practices were not resurrected by private action once they were removed by Governments. Another delegation stated that regulation in any case should not be discriminatory and that limitations on national treatment of foreign service providers should not be considered preferable to restrictions on market access.

8. Issues suggested for further study included the topic of human resource development and the formulation of appropriate policy reform in the services sector. It was stressed that without human resource development's accompanying policy reform, even the best-conceived policy could not be successfully implemented. The issue of the particular role of transnational services corporations in the transition process of formerly centrally planned economies was also suggested as an important topic for further research, especially in light of the fact that transitional economies had not yet succeeded in attracting considerable foreign investment to their services sectors.

9. With regard to the importance of foreign direct investment in services, one delegation noted that the three other modes of delivery of services to foreign markets (movement of consumers, movement of services providers and cross-border trade) were more important in its country's current account balance than foreign direct investment (in terms of outflows). The secretariat emphasized in its reply that the significance of foreign direct investment in the international transactions of a country would be visible not so much in the actual flows of foreign direct investment as, rather, in the resulting sales of foreign affiliates in services.

Chapter IV

INTERNATIONAL ARRANGEMENTS AND AGREEMENTS RELATING TO FOREIGN DIRECT INVESTMENT AND TRANSNATIONAL CORPORATIONS, INCLUDING GUIDELINES AND OTHER INSTRUMENTS

1. The Commission considered item 5 of its agenda at the 8th meeting, on 6 May 1994. The Commission heard oral presentations by the representative of the General Agreement on Tariffs and Trade (GATT), the representative of the Organisation for Economic Cooperation and Development (OECD), and the representative of ILO.

2. The Chairman of the Commission introduced this agenda item recalling that the Commission had been called upon to discuss significant developments concerning international arrangements and agreements relating to foreign direct investment and transnational corporations. He observed that the growing importance of transnational corporations in the organization of transnational economic activity led to thinking about a public framework for transnational corporation activity, in particular, in the light of the emergence of a transnational corporation-led integrated international production system and increasingly deeper and more complex cross-border economic interrelations. He noted that the Commission used to consider under this agenda item reports on the progress made in the negotiations on the Code of Conduct on Transnational Corporations until the Commission decided a few years before to end the negotiations on the Code. Nevertheless, intergovernmental cooperation in the area of foreign direct investment has intensified in recent years mainly in response to policy efforts by Governments to provide a favourable climate for foreign direct investment and the operations of transnational corporations, as part of broader efforts to facilitate cross-border economic activity. The most significant development at the multilateral level in the last few years was the conclusion of the Uruguay Round of multilateral trade negotiations. Of particular significance for foreign direct investment were the agreements on trade-related investment measures and on international trade in services. Another significant development was the preparation by the World Bank of its Guidelines on the Treatment of Foreign Direct Investment. In OECD, a new initiative aimed at consolidating a number of existing instruments into a wider foreign direct investment instrument was under consideration. The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy also deserved the special attention of the Commission because it focused on social policy which was one of the most pressing issues in the policy agenda of Governments at this time. Developments with respect to these efforts were therefore likely to have significant implications for international policy-making on foreign direct investment and for future cooperation in this area.

3. As requested by the Commission at its previous session, the Chairman invited oral presentations by representatives of the organizations pursuing the above-mentioned efforts.

4. The representative from the secretariat of GATT noted that the successful conclusion of the Uruguay Round of multilateral trade negotiations in December 1993 and the formal adoption of the resulting instruments on 15 April 1994 were of major importance for the investment climate around the world, both domestic and foreign, as they liberalized access to markets and opened up new possibilities for productive investment. The most important agreements relevant for foreign direct investment were the Agreement on Trade-Related Investment Measures, the General Agreement on Trade in Services and the

Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods. He explained the key features of the Agreement on Trade-Related Investment Measures. The Agreement provided for a review within five years to consider further provisions on investment and competition policy. While trade-related investment measures were one of the three new areas that had been taken up in the Uruguay Round, the outcome of the negotiations on trade-related investment measures was undoubtedly much more modest than that in other areas. Turning to the General Agreement on Trade in Services, the speaker explained some of its most salient traits which included its definition and coverage of four main modes of supply of trade in services. In particular, the modes involving commercial presence and the presence of natural persons in another country were particularly relevant for issues of foreign direct investment, as they covered, among other things, right of establishment and the treatment of services providers once established. He noted three categories of obligations imposed under the General Agreement on Trade in Services. The first category comprised obligations applicable to all trade in services and included, inter alia, basic requirements of most-favoured-nation treatment, transparency of laws and regulations, availability of impartial review mechanisms and remedies and endeavours to harmonize criteria for authorization and licensing of service suppliers. The second category of obligations concerned the specific commitments contained in the Schedules of Concessions of each of the member States. The requirement of national treatment was thus made dependent on the inclusion of such commitments in the Schedule of a member and subject to any conditions or qualifications set out therein. Those commitments, in turn, led to obligations to notify the Council for Trade in Services of any new laws or administrative practices affecting significantly trade in services. All members of the World Trade Organization were required to have Schedules of Services commitments. Although the initial commitments already attached to the Agreement were significant, the speaker said that it was understood they represented only a start. Further negotiations would take place at five-year intervals. In addition, Ministerial Decisions adopted at Marrakesh provided for negotiations in a number of areas, including the movement of natural persons, financial services, maritime transport and basic telecommunications, to resume without delay. The General Agreement on Trade in Services provided flexibility for developing countries to pursue their own development priorities and open a few service industries or liberalize a few types of transaction. Special provisions were made for the least developing countries. The third category of substantive provisions in the Agreement comprised those to be found in various annexes relating to particular services sectors.

5. The speaker explained that the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, did not deal directly with investment issues but did address an important aspect of the legal environment affecting the conditions under which foreign investment took place, namely the protection of intellectual property. It covered all the main areas of intellectual property rights and laid down minimum standards of substantive protection for each category of rights. For the first time in international law, there was an Agreement requiring member States to provide within their national laws effective procedures and remedies for the enforcement of intellectual property rights.

6. The representative of the OECD secretariat stated that one of the primary objectives of OECD was to help its member States liberalize international trade in goods and services and establish progressively a system of free capital movements. To achieve this, the Organisation had at its disposal a wide range of instruments for cooperation. These embodied important commitments entered into by member countries for facilitating what was one of the major components

of international economic relations, namely, foreign direct investment. Until now, that cooperation had developed around two main pillars: the Code of Liberalisation of Capital Movements and the Code of Liberalisation of Current Invisible Operations, and the National Treatment Instrument, which was an integral part of the 1976 Declaration and Guidelines on International Investment and Multinational Enterprises. While these instruments did not have the same origin and scope, taken together they covered all direct investment transactions, whether by non-resident enterprises or by established enterprises under foreign control. They established two fundamental principles - right of establishment and national treatment; the corresponding procedures constituted the most detailed multilateral rules currently in force on the international scene. Another important component of the 1976 Declaration was the Guidelines for Multinational Enterprises. The Guidelines were a set of recommendations addressed to transnational enterprises to guide their operations in such areas as disclosure of information, financial and fiscal matters, science and technology, environmental protection, consumer protection and restrictive business practices, and employment and labour relations. The speaker emphasized that considerable efforts had been made over the years by the two Committees in charge of the interpretation and application of the instruments just mentioned to widen the scope of the OECD instruments relating to inward direct investment and ensure a coherent interpretation of member countries in this area. Thus, in addition to strengthening the procedures for implementing existing commitments under those instruments, the Council of Ministers of OECD requested the secretariat to study the feasibility and advantages of a broader investment instrument. The study could take into account trends in investment flows and investment instruments and draw on provisions of the National Treatment Instrument and the Codes of Liberalisation. It might also take into account the consideration of other principles embodied in member countries' bilateral investment treaties and examine the possibility of strengthening dispute settlement procedures. The wider investment instrument would be in principle legally binding on OECD member States but could also be open for signature by non-OECD member countries. The matter was still at the preliminary stages and it was difficult to predict the final outcome; however, efforts were under way to prepare elements of a draft instrument within the current year.

7. The representative of the ILO secretariat observed that the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy had been the response of ILO to the effects of the increasing transnationalization of the world economy and the role of foreign direct investment on employment, labour conditions and labour relations, as well as on the living standards of peoples around the world. For ILO, an organization in which employers and workers had their say along with Governments, these concerns were of particular importance. After describing the main contents of the Tripartite Declaration, the speaker turned to the mechanisms established within ILO for the follow-up on the Declaration. He stressed that though the Declaration was a voluntary instrument, a procedure approved by the Governing Body made it possible for aggrieved parties to submit requests for interpretation of its provisions if there were disagreements on their application. He outlined the procedures set up to handle such requests and noted that out of more than 50 requests submitted so far, only a handful of them could be taken up, since the others related to matters that, in principle, could be dealt with more appropriately under the follow-up mechanisms of certain ILO conventions. He further stressed that the Tripartite Declaration provided an indispensable "social foundation" for negotiations on labour and social issues. It was responsive and adaptable to the exigencies of a changing international economic and social environment and contributed to the setting of rules by which a partnership could be established in which Governments, employers and employees

bore proportionate responsibilities in enhancing economic and social development. Not only did it influence labour regulations, collective agreements and national policies on transnational corporation/labour relations, but through being a tripartite and voluntary instrument, it made it necessary for all parties to recognize the level of their interdependence and the concomitant responsibility for consulting and cooperating with each other. Lastly, the speaker said that as the liberalization of policies on foreign direct investment and privatization gained momentum, the Declaration would reinforce the point that tripartite cooperation, dialogue and transparency and the elaboration of adequate national regulations could play a central role in maximizing a broad range of economic and social gains.

8. One delegate, recalling the introduction made by a representative of the World Bank at the previous session of the Commission to the subject of the Guidelines on the Treatment of Foreign Direct Investment adopted by the Bank, asked the representative of the OECD secretariat what the differences and similarities were between that instrument and the OECD Guidelines that had just been described by him. The OECD representative explained that despite their similar titles, those instruments were in fact completely different. Indeed, while the World Bank Guidelines were addressed to Governments and dealt with a number of standards of treatment to be given to foreign investors in order to attract investment flows, the OECD Guidelines were addressed to transnational corporations and provided standards for their activities as good corporate citizens. The World Bank Guidelines were also different from all the instruments that had just been discussed in that they did not contain mechanisms for follow-up or implementation.

9. Another delegation asked the representative of the ILO secretariat what guarantees the ILO Tripartite Declaration offered on youth labour and gender labour issues. The representative of ILO responded that with respect to youth labour, the approach of the Tripartite Declaration was based on the notion that conditions applicable to transnational corporations should not be different from those applying to national enterprises in their host countries. The Declaration was clear on the subject of gender issues in that it included a clause proscribing discrimination by reason of gender, race, nationality, or religious or political beliefs.

10. The Chairman asked for clarification on whether the GATT Ministerial Conference in Marrakesh had requested the new World Trade Organization to take up work on trade and investment or on trade and competition. It was observed that currently there was only a Committee on Trade and Environment. However, competition policy and company restrictive practices came up in various forms in the new Uruguay Round agreements, notably in the context of the General Agreement on Trade in Services which provided for consultations on this issue. In other agreements on trade in goods there were also some provisions about the need to take up competition issues in the future.

11. Another delegation asked the representative of OECD for clarification about the suggestion made by an expert adviser that the best prospects for concluding a comprehensive instrument on foreign direct investment were with the OECD wider instrument currently under preparation. The representative of OECD explained that while the wider instrument was to be negotiated among OECD member States and, in principle, would bind only them, OECD had always taken a very flexible approach with respect to opening its instruments to non-members for signature if they wished to be bound by them. He referred to recent examples of non-member countries' having adopted some OECD instruments.

12. The representative of the International Organization of Consumers Unions (IOCU) stated that her organization was naturally disappointed by the stalemate reached on the proposed Code of Conduct on Transnational Corporations but noted the resolution passed at the special consultations on the Code of Conduct in July 1992 on a fresh approach which could "include the preparation of guidelines and/or any other international instrument on foreign investment". She said that her organization supported proposals for a single international instrument based on voluntary codes and guidelines such as the OECD Guidelines for Multinational Enterprises, the International Chamber of Commerce Charter for Sustainable Development and the Guidelines for consumer protection contained in General Assembly resolution 39/248, annex. The new WTO might also develop rules related to foreign direct investment in areas such as competition policy and trade and environment. Her organization proposed that the Commission at its twentieth session should take specific decisions to undertake the development of such guidelines based in the main on existing binding and non-binding multilateral instruments and to give UNCTAD's Division on Transnational Corporations and Investment the mandate and the resources to support the development and implementation of the guidelines. IOCU hoped that Governments represented at the Commission would live up to their great responsibility and resolve to include guidelines for global business in the programme of work of the Commission. One delegation stated that the Commission should not undertake work on the preparation of guidelines for global business.

Chapter V

COUNTRY AND REGIONAL EXPERIENCES IN ATTRACTING FOREIGN DIRECT INVESTMENT FOR DEVELOPMENT

1. The Commission considered item 6 of its agenda at its 6th and 7th meetings, on 5 May 1994. It had before it the following documents:

(a) Report by the UNCTAD secretariat on foreign direct investment in Africa (E/C.10/1994/5);

(b) Report by the UNCTAD secretariat on foreign direct investment to the least developed countries and other developing countries outside Africa (E/C.10/1994/6 and Corr.1);

(c) Report by the UNCTAD secretariat on the exchange of information on foreign direct investment (E/C.10/1994/7).

2. In introducing the item, the Assistant Director, Research and Policy Analysis Branch of the Division on Transnational Corporations and Investment, stated that the recent spectacular growth of foreign direct investment flows to developing countries had been unevenly distributed among developing-country groups and regions. The group of the least developed countries had not participated in this growth. Flows to Africa - which included the largest concentration of least developed countries - had not increased either; as a result, the share of Africa in developing-country inflows to developing countries had halved to 6 per cent between the second half of the 1980s and the early 1990s. He noted accordingly that most of the growth of foreign direct investment inflows to developing countries had been concentrated in East and South-East Asia, as well as Latin America and the Caribbean. While turning to Africa, he noted that the flows to that continent had remained small despite the widespread liberalization of foreign direct investment policies undertaken by most of the African Governments during the 1980s, often as part of structural adjustment programmes. The attractiveness of Africa as a location for foreign direct investment continued to be constrained by the small size of most markets, weak private sectors, poor physical infrastructure, an uneven skill level and the heavy reliance on primary exports. He noted, however, that it would be wrong to generalize from the negative situations in some countries to the continent as a whole, because a number of countries in Africa - in addition to oil-exporting ones - were clearly more successful in attracting foreign direct investment than others, especially, if foreign direct investment inflows were measured in relative terms, for example, as a percentage of GDP. The continuing reform efforts in many African countries should help improve their economic performance and thus increase the number of countries in the group of successes.

3. Moving on to a consideration of the more successful regions as regards foreign direct investment, the Assistant Director, Research and Policy Analysis Branch, said that South, East and South-East Asia had been experiencing the fastest economic growth in the world, and continued to be the largest host developing-country region to foreign direct investment flows, accounting for 57 per cent of the developing country total in 1992. China, in particular, had become the most dynamic and largest host country not only in this region but also in the developing world. Across the region, expanding markets were likely to continue to attract foreign direct investment. At the same time, shifts in cost advantages led to the transfer of labour-intensive types of foreign direct investment from middle-income countries to low-income ones, while the former

moved towards receiving higher-quality foreign direct investment and, particularly, foreign direct investment in the services sector. Domestic investors from middle-income countries were also participating in this process, thus reinforcing the emergence of those countries, notably the Republic of Korea and Taiwan Province of China, as major home countries for the region. The Assistant Director mentioned that Latin America and the Caribbean had also benefited from increased investment flows, thus marking the reversal of a trend. A considerable amount of this investment had been attracted to the primary and services sectors, sectors in which privatization programmes - a magnet for foreign direct investment in this region - predominated. While so-called subsidized foreign direct investment - that is, foreign direct investment undertaken through the participation in privatization programmes and debt-equity conversions - was still important for the region, some countries had succeeded in attracting growing amounts of conventional foreign direct investment. Future inflows of foreign direct investment to this region would be facilitated by continued opening policies, including progress towards regional integration with other developing and developed countries, increased export orientation and the return of the countries of the region to international capital markets.

4. The speaker stressed that the broad-based trend towards a more open foreign direct investment framework had become an important feature across the developing world over the past decade. Given this overwhelming trend, the report by the UNCTAD secretariat on the exchange of information on foreign direct investment (E/C.10/1994/7), submitted to the Commission under agenda item 6, had analysed the characteristics of the liberalization process and examined how far that process had gone. Noting that the process of liberalization involved not only the reduction of market distortions due to restrictions and special incentives for foreign direct investment, but also the adoption of positive standards of treatment and protection for foreign investors, and the strengthening of controls and prudential supervision to ensure proper functioning of the market, he observed that with respect to all these aspects foreign direct investment regimes around the world had changed in the direction of liberalization during the past decade. As important as those changes were for attracting foreign direct investment flows, they were, however, only a part of what was necessary to create a favourable investment climate. An increasingly important aspect was a well-functioning legal framework for business operations in general, including well-functioning institutional and administrative infrastructure.

5. The Assistant Director noted in concluding that while the process of liberalization was leading to a certain convergence of the characteristics of foreign direct investment regimes, there still existed numerous and important differences. At the same time, the integration of production across borders suggested that a number of national policies relating to the production process were acquiring international dimensions. This raised new challenges for policy makers in all countries. Exchanges of information among countries about their experiences with foreign direct investment and their policy frameworks could therefore be particularly useful.

6. Delegations from developed and developing countries as well as expert advisers agreed that while there had been progress as regards foreign investment flows to developing countries as a group, some groups of countries, especially the least developed countries and most of the African countries, had not benefited from the increased foreign direct investment flows to developing countries and had been marginalized in world foreign direct investment, in addition to world trade. Many delegations and experts shared the assessment contained in the reports before the Commission that while prospects for foreign

direct investment flows to Asia and Latin America were good, especially for the former, those for such flows to Africa were not, especially in the short run, despite the clear labour-cost advantage in manufacturing that many African countries currently enjoyed vis-à-vis other regions. In the long run, the potential of Africa to receive foreign direct investment would be substantial, provided, however, that structural problems (including, inter alia, investment in physical and human infrastructure) were addressed by Governments, policy reforms were carried out in a consistent manner, and political and economic stability was achieved. In the case of the least developed countries, meeting a number of these objectives - for example, improvements in capital-intensive infrastructure - would require significant inflows of official development assistance.

7. Many delegations agreed with the explanation of the weak foreign direct investment performance in Africa contained in the report by the UNCTAD secretariat on foreign direct investment in Africa (E/C.10/1994/5). Some delegations and one expert adviser asserted that there had been no evidence that structural adjustment programmes helped attract significant amounts of foreign direct investment to African countries. Some other delegations upheld this view, stating, in their turn, that such cases were the exception rather than the rule.

8. A number of speakers agreed that one of the key tasks of the Governments in Africa undertaking efforts to improve the investment climate in their country was to change the image of the country that was based on the image emerging from the media of all of Africa as constituting a site inhospitable to foreign investors.

9. Several speakers shared with the Commission their region's or country's experiences in the area of attracting foreign direct investment and its role in development. One delegation emphasized that Asia's good economic performance had resulted from the appropriate mixture of market measures and correct government intervention and that a skilful use of foreign direct investment had played a huge role in that performance, and suggested that a study of this experience be prepared for the next session of the Commission. An expert adviser from a developing country discussed at length the positive response of transnational corporations to the opening of his country as reflected in a massive inflow of foreign direct investment and a number of examples of positive influence exerted on the country in the areas of ownership structure, new forms of organizing business, management techniques, upgrading of local products and technology, creation of jobs and changing of the local mentality to one more open to the outside world. While agreeing with this picture a delegate from the same country emphasized that in the case of his country foreign direct investment was a two-way street bringing benefits not only to his country but also to transnational corporations. In addition, the country still had a lot to do to attract capital from major home countries, as most of the recent investment originated from the country's nationals living overseas.

10. A delegation from a developed country stressed that the country that had had such success was a low-income one and that therefore its experience should be studied by other developing countries that had experienced difficulties in attracting significant amounts of foreign direct investment. The delegation added that countries at a low level of development typically would not count on large foreign direct investment inflows and that therefore it was normal that the least developed countries relied to a greater extent on the inflows of official development assistance. Another delegation, however, noted that the

size of that assistance was not sufficient, and that therefore supplementing it with the inflows of foreign direct investment was very important.

11. Searching for an answer to the question why foreign direct investment liberalization measures in a number of countries had failed to attract foreign direct investment, a delegation from a large host developing country stated that its country had found itself in a similar situation in the second half of the 1980s (actually foreign direct investment inflows even declined after liberalization), and that the underlying causes included the lack of financial stability of the country: perhaps lack of stability in various areas was a major cause of a weak response to the African liberalization. Another cause was most likely a yet unresolved problem of external indebtedness still persistent in many African countries.

12. A delegation from a developed country disagreed with the assessment in the report on Africa that all countries had liberalized their foreign direct investment policies in all sectors. In addition, many African countries were still lagging in the area of macroeconomic policy. In this context, he questioned the presentation of one of the large countries as a role model for foreign direct investment policies.

13. Experience-sharing was not limited to host country policies: one delegate drew the Commission's attention to the positive role that home country policies could play in encouraging investment flows to developing countries, citing his country as an example. He said that promotion of foreign direct investment was embedded in a broader framework of support to the development process involving the participation of private enterprises which were entrusted with taking the initiative in establishing joint ventures in developing countries.

14. One delegation expressed dissatisfaction with the weak coverage of the Central and Eastern European region in the reports before the Commission. The Assistant Director responded immediately that an entire section on this region was planned for inclusion in World Investment Report, 1994. A number of delegations from the region informed the Commission about their experiences with foreign direct investment. One delegation from a Central European country stated that foreign capital entered the region very cautiously and provided the Commission with the results of the study on foreign investors' perception of the risks in the Central European part of the region. The study showed a differentiated perception not always in line with a popular view of progress in the transition towards a market economy on the one hand and of the rise in most of these countries' attractiveness to foreign investors on the other.

15. Considerable discussion took place on further actions to be taken at the national, regional and multilateral levels to enhance the role of foreign direct investment and transnational corporations in economic development. The discussion focused on how to do so in the case of Africa. A delegation from a developed country and another delegation from a developing country suggested that efforts aimed at the improvement of the investment climate in Africa should be better coordinated in order to achieve concrete results. Many delegations including one speaking on behalf of a large group of countries strongly supported the idea of a high-level symposium on foreign direct investment in Africa organized by the UNCTAD secretariat and called on countries in a position to do so to provide funding for this effort.

16. A number of suggestions were made on preparing specific studies aimed at helping attract foreign direct investment to developing countries or on exchanging experience including a study on the role of foreign direct investment

in the economic success of Asian countries and an analysis of the investment potential in each of the least developed countries for the purpose of informing transnational corporations about investment opportunities in those countries.

17. One delegation spoke about the importance of bilateral investment treaties as instruments for promoting the flow of foreign direct investment between developed and developing countries. Those instruments should also be taken into account when analysing governmental efforts to improve the investment climate and encourage the flow of foreign direct investment towards developing countries.

18. In sum, the importance of liberalizing foreign direct investment regimes and adopting facilitating measures for attracting foreign investors was generally recognized, but it was also noted that in order to achieve maximum results, countries needed to focus on creating stable macroeconomic and micro-economic conditions. As a number of delegations explained the recent changes in their foreign direct investment regimes and their experiences in dealing with foreign investors, it was noted that these exchanges indeed provided useful examples for other countries facing similar conditions and problems. Thus, a number of delegations suggested that the practice of exchanging experiences among Governments on foreign direct investment policies was very useful and should be encouraged. They observed that the Commission on Transnational Corporations, being the main forum within the United Nations on foreign direct investment matters, was the most appropriate body for carrying on these exchanges which could benefit, however, from being more structured and regular. Such exchanges, for example, could be facilitated and supported by the preparation of country studies involving the Secretariat, governmental experts, independent experts from the private sector and other interested parties. An alternative format for the exchanges of experiences could be to focus on specific issues each year, such as, for example, tax incentives, authorization procedures and settlement-of-disputes mechanisms.

19. In his concluding remarks, the Assistant Director summarized the main issues discussed and responded to specific questions raised by the delegations. He said that the focus on Africa during the discussion was important, given that Africa (including its least developed countries) clearly lagged behind other groups of developing countries as regards the growth of foreign direct investment inflows. While he did not dispute the importance of creating the appropriate image of individual countries vis-à-vis foreign investors, he did note that in many cases it was the issue of unfavourable basic determinants of foreign direct investment which could not be corrected easily in a short period of time. Nevertheless, all efforts should be made to change the situation as soon as possible, and in this context he welcomed the support given to the investment symposium for Africa. He referred also to the ongoing work of the Secretariat on bilateral investment treaties and called on delegations to continue to provide the Secretariat with information on new treaties.

Action taken by the Commission

20. The Commission took note of the reports by the UNCTAD secretariat and requested the secretariat to continue its programme of work in this area, including especially country and regional experiences in attracting foreign direct investment for development as well as comparative studies on trends in policy frameworks around the world and their impact on foreign direct investment flows.

Chapter VI

EXPERIENCE GAINED IN TECHNICAL COOPERATION RELATING TO FOREIGN DIRECT INVESTMENT AND TRANSNATIONAL CORPORATIONS

1. The Commission considered item 7 of the agenda at its 9th meeting, on 9 May 1994. It had before it the following documents:

(a) Report by the UNCTAD secretariat on technical cooperation activities (E/C.10/1994/8);

(b) Report by the UNCTAD secretariat on entrepreneurship and enterprise development (E/C.10/1994/9);

(c) Report by the UNCTAD secretariat on technical assistance for a new South Africa (E/C.10/1994/11).

2. In the introductory statement, the Assistant Director for Advisory Services on International Business stated that in most developing countries, the impact of harsh economic conditions and pressures of competition for investments had led to more comprehensive approaches by Governments in attracting foreign investment. Currently, Governments not only sought assistance in revising their foreign investment law, but were increasingly interested in developing an overall favourable investment climate through appropriate macroeconomic and other management policies and the development of support systems for local enterprises.

3. The Assistant Director continued by saying that the technical assistance programme entailed not only advisory services, but also training of public and private sector representatives in foreign investment issues. Training of entrepreneurs was part of these activities and was done through the EMPRETEC 4/ programme which targeted small- and medium-scale enterprises and assisted in making these businesses dynamic and therefore attractive partners for foreign investors. EMPRETEC was currently operational in eight different countries in Latin America and Africa and was already assisting more than 2,250 entrepreneurs.

4. There was a continuous demand from developing countries and economies of Eastern Europe for technical assistance on issues related to transnational corporations and foreign investment. The head of the Branch expressed his hope of being able to respond to these requests and emphasized especially the needs of the newly elected democratic Government of South Africa, which had the enormous task of building a local capacity and at the same time of winning the confidence of the international business community in order to attract foreign investments. The head of the Branch concluded the introductory statement by emphasizing that the technical assistance programme could not exist without financial support from donor countries and donors were asked, now that the restructuring of the programme within UNCTAD had been completed, to resume their regular contributions to the general Trust Fund on Transnational Corporations.

5. Many delegations from developing countries and countries with economies in transition expressed their appreciation of the Division's technical assistance

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4/ This acronym is derived from the words in Spanish meaning "entrepreneurs" (emprendedores) and "technology" (tecnología).

activities in the areas of policy-making and related legislation, foreign direct investment promotion, privatization, development of human resource and enterprise development. Some delegations mentioned the results of specific technical assistance activities in their own country and requested the continuation as well as the expansion of these programmes. Several delegates of developed countries also expressed their appreciation of the technical assistance programme. One delegate specifically mentioned the valuable work performed in the development of government policies to improve the international competitiveness of developing countries. The same delegate also congratulated the Secretariat for the excellent quality of the reports prepared by the Secretariat on technical cooperation activities.

6. A delegate who spoke on behalf of a large group of developing countries complimented the Division for its technical assistance activities, as they put much of the Division's valuable research to practical use. Many countries benefited from the Division's technical assistance programme and the group called upon UNCTAD to continue and further strengthen the work in this area. The group noted that the technical assistance programme, had adjusted to the wider scope of areas that had to be addressed for promoting and supporting foreign investment and local business. It also expressed its appreciation for the programme's shift towards the "fine-tuning" of issues to suit specific needs of individual countries. The group further emphasized the importance of training programmes to build national capacities and was pleased to note that training was currently an important part of the overall technical assistance programme. The delegate concluded by saying that the group urged donor countries to contribute to the Trust Fund so that it could provide adequate resources to continue the commendable programme of technical assistance.

7. A delegate of a developed country stated that in the case of the Division on Transnational Corporations and Investment, the marriage between analytical work and technical cooperation activities had been fruitful and harmonious. The delegate also observed that there was a growing demand for technical assistance from many countries that were trying to attract foreign investment. Lack of resources made it impossible, however, for the Division to adequately respond to these requests. The delegate noted that the Division had survived the transfer from New York to Geneva in fairly good shape and that the delegate's Government had wished to express its confidence in the Division's capability to continue its quality work by resuming its contribution to the Trust Fund with a donation of US$ 275,000. This amount was not earmarked for any specific project, though the delegate mentioned that it would be appreciated if some of those funds could be used to help establish a good framework for international investment in newly democratic South Africa. The delegate concluded by urging other donors to join in resuming financial support for the technical assistance activities of the Division.

8. The delegate of an African country joined other delegates in congratulating the newly democratic Government of South Africa and encouraged the Division to assist the new Government in its new challenge of attracting new foreign investors. The delegate of a developed country encouraged the technical assistance programme to continue and expand its assistance to the least developed countries.

9. The delegate of a Latin American country as well as that of an African country elaborated on the results and successes of the EMPRETEC programme in their respective countries. They expressed their hope that donor countries would resume their financial support for the technical assistance programme, so that the Division could continue its valuable work in this field.

10. The delegates from two developed countries expressed their special appreciation for activities in the area of entrepreneurship and business development. One delegate mentioned that starting in 1995, Business and development would be a permanent item on the agenda of the General Assembly. The delegate expressed his hope that this would strengthen UNCTAD in the pursuit of its activities in this field. The delegate from a Western European country that had previously contributed to the EMPRETEC programme suggested that the package of activities under this programme should be continuously upgraded in order to adjust its services to the changing needs of participating entrepreneurs.

11. The delegate of a South-East Asian country emphasized the importance of small- and medium-scale enterprise development in accomplishing overall economic development, and welcomed a programme like EMPRETEC. The delegate observed, however, that that programme only operated in countries in Latin America and Africa and recommended that the Secretariat broaden the scope of the programme to include Asia. The same delegate also elaborated on the work done in the area of build-operate-transfer (BOT) arrangements and emphasized the importance of technical support to developing countries that were experimenting in this field.

12. The delegate of another South-East Asian country underlined the importance of transnational corporations as sources of technological know-how and generators of investments in developing countries. The delegate emphasized the importance of the technical assistance programme in helping Governments to attract transnational corporation investments and requested donors to resume their contributions to the Trust Fund to assure the continuation of that programme. Special reference was made to the project proposal "Assistance to Association of South-East Asian Nations (ASEAN) Countries in Capital Market Development". This regional programme proposal, designed by the Division in cooperation with government agencies, was not yet implemented owing to lack of financial support.

13. Delegates of a developed and of a developing country mentioned that they would appreciate it if in future countries could be mentioned by name in the reports prepared by the UNCTAD secretariat. It made it more difficult for delegates to assess the impact of the technical assistance programme if a country was referred to as, for example, "an African country" or "a country in the Caribbean that had received assistance".

14. In response to the issue raised by the delegates regarding the mentioning of country names in the Secretariat's reports, the Assistant Director for Advisory Services on International Business stated that what was important was the nature of the problem and the appropriateness of the policy response and advisory prescription, rather than the name of the particular country. Moreover, although failure to mention the name of the country did make it somewhat more difficult to retain the interest of the reader, a greater loss would be incurred if the Division was not able to analyse the experiences of various countries in an objective manner without fear of triggering political sensitivities. In his concluding remarks, the head of the Branch expressed his appreciation for the positive reactions from the many delegations that had participated in the debate. He emphasized, however, that continuation of the technical assistance activities discussed during the debate could be realized only with sufficient financial support. The head of the Branch thanked the donor country that had announced its renewed contribution to the Trust Fund and expressed his hope that other donors would follow in renewing their confidence in the programme.

15. The Chairman closed the meeting by mentioning that he was very pleased with the large number of countries participating in the debate on technical cooperation activities, which reflected the wide appreciation and interest from member countries in this part of the Division's programme.

Chapter VII

IMPLEMENTATION OF THE PROGRAMME ON TRANSNATIONAL CORPORATIONS AND CONSIDERATION OF FUTURE ACTIVITIES OF THE COMMISSION

1. The Commission considered item 8 of its agenda at the 11th and 12th meetings, on 10 and 11 May 1994. It had before it the following documents:

(a) Report by the UNCTAD secretariat on the activities of the Programme on Transnational Corporations (E/C.10/1994/10);

(b) Report by the UNCTAD secretariat on technical assistance for a new South Africa (E/C.10/1994/11);

(c) Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its eleventh session (E/C.10/1993/12);

(d) Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its twelfth session (E/C.10/1994/12).

2. In introducing the item, the Director-in-charge of the UNCTAD Division on Transnational Corporations and Investment stated that the transfer of the Programme on Transnational Corporations to Geneva had encountered logistic problems and that re-establishment of the Programme in Geneva at its full capacity had not yet taken place. The Director-in-charge noted, however, that the work programme had emerged from the disruption relatively unscathed and, referring to the opening statement of the Officer-in-charge of UNCTAD, that integration into UNCTAD was well under way with several joint activities and synergies emerging. The Director-in-charge noted that during the reporting period 50 technical papers and reports had been issued, 35 advisory projects implemented, some 30 round-table meetings and workshops conducted and more than 3,000 requests answered by the Programme which currently formed the Division on Transnational Corporations and Investment.

3. The Director-in-charge highlighted the issuance of World Investment Report, 1993: Transnational Corporations and Integrated International Production, 5/ the first 3 volumes of the World Investment Directory, 1992 6/ and the first 16 volumes of the United Nations Library on Transnational Corporations. He also highlighted the "International forum on small- and medium-sized enterprises and development: the role of foreign direct investment", held in September 1993 in Osaka, Japan, which had been organized by the Programme in collaboration with the Osaka Prefectural Government, the Osaka City Government and the Osaka Chamber of Commerce and Industry in order to promote a better understanding of the role of small- and medium-sized transnational corporations in the development process. In the area of services, the Director-in-charge pointed out that earlier cooperation with the World Bank in the context of an input into the Uruguay Round of multilateral trade negotiations had been followed up in

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5/ United Nations publication, Sales No. E.93.II.A.14.

6/ Volume I, Asia and the Pacific (United Nations publication, Sales No. E.92.II.A.11); Volume II, Central and Eastern Europe (United Nations publication, Sales No. E.93.II.A.1); Volume III, Developed Countries (United Nations publication, Sales No. E.93.II.A.9).

1993 with the preparation of Liberalizing International Transactions in Services: A Handbook, 7/ on the basis of which technical cooperation was extended to countries in Africa, Asia and Latin America in the context of an interregional project funded by UNDP. He stressed that the Division was also continuing its work on the Directory of the World's Largest Service Companies and had issued two reports on the impact of modern telecommunications technology on the tradability of insurance and banking services, and that similar research in the area of consulting and telecommunications services was under way, funded by the Danish International Development Agency (DANIDA).

4. The Director-in-charge noted that the demand for the Division's advisory and training services had continued to increase and that the Division's activities in this area had focused increasingly on subjects requiring that those activities extend beyond advice on the mere reformulation of investment legislation so as also to cover advice on the quality of economic management and the efficiency and probity of administration. In this regard, he also recalled that the Programme had assisted Governments and State-owned enterprises in negotiating joint venture, management and other arrangements with transnational corporations operating in various sectors, as well as a large number of private enterprises in developing countries in the realm of its EMPRETEC programme. The Director-in-charge reported that voluntary contributions to the Trust Fund on Transnational Corporations had nearly ceased in 1993. He called on donor countries to replenish the Trust Fund in order to restore the technical cooperation activity of the Programme to earlier levels.

5. The Director-in-charge also reported that a new UNCTAD Reference Service had been created which consisted of the reference units of the former Programmes on Transnational Corporations and on Science and Technology, and noted that the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting (ISAR) had successfully completed its transition during its twelfth session, held in Geneva from 7 to 15 March 1994.

6. In his remarks, the Director-in-charge acknowledged the financial and in-kind contributions received by the Programme during 1993. He also emphasized that the activities of the Programme in 1993 had been undertaken in close collaboration with other international organizations.

7. Supplementing the statement of the Director-in-charge, the Chiefs, Joint Economic Commission for Africa/UNCTAD, Joint Economic Commission for Latin America and the Caribbean/UNCTAD and Joint Economic and Social Commission for Western Asia/UNCTAD Units on Transnational Corporations, made statements regarding the implementation of the Programme on Transnational Corporations in their respective regions.

8. The report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its twelfth session (E/C.10/1994/12) was introduced by the Assistant Director of the Division. The Assistant Director reported that at its twelfth session, the Group had discussed significant global and national developments in the field of accounting and reporting, accounting and valuation procedures applicable to new financial instruments, disclosures of environmental matters in the annual reports of transnational corporations, accounting for government grants and for leases, and the General Agreement on Trade in Services that had been negotiated as part of the recently concluded GATT Uruguay Round. Concerning this latter topic, the Assistant Director also stated that members of ISAR had recognized that the

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7/ United Nations publication, Sales No. E.94.II.A.11.

General Agreement on Trade in Services could have significant effects on the accountancy profession in member States and that the experts had taken note of the proposal that a Working Party for Professional Services be established under the Agreement. He reported that the Group expected that this Working Party, in respect of its work on accounting matters, would establish close cooperation with ISAR so as to eliminate avoidable duplications.

9. All delegations taking the floor expressed their appreciation of the quality and quantity of the Division's research and technical advisory work in the area of foreign direct investment and noted with satisfaction that despite the difficulties caused by the transfer, the Programme had been able to continue its important work in more or less the same fashion as before. Delegations also noted the extreme importance of the work of the Programme for the work undertaken by developing countries within UNCTAD since the eighth session of UNCTAD, held at Cartagena de Indias, Colombia.

10. Delegations stated their satisfaction particularly with regard to the quality of the technical assistance provided by the secretariat in the area of foreign direct investment which was considered highly significant. They referred to the usefulness of the seminars and workshops organized by the Programme during the last year, particularly in the area of entrepreneurship development. Developing countries as well as economies in transition expressed appreciation for the received assistance in formulating foreign investment laws and regulations, negotiating joint venture arrangements and strengthening investment institutions. Also, it was noted by delegations that the research work of the programme on foreign direct investment issues, including as regards services, and, in particular, World Investment Report, 1993, had remained of consistently high quality. Several delegations were particularly pleased with the efforts made with regard to the issue of small- and medium-sized transnational corporations and their contribution to the development process. It was stated that this was an area where very useful contributions had been made by the Programme to the work of UNCTAD in the area of privatization and technology transfer.

11. Several delegations expressed concern with regard to the reduction of the resources available for the Trust Fund on Transnational Corporations and the programme's advisory and training work in the area of foreign direct investment. While acknowledging the contribution of one donor country announced during the twentieth session of the Commission, several delegations pleaded with other contributing countries to continue to make a similar effort to replenish the Trust Fund on Transnational Corporations.

12. The view was also expressed by one delegation speaking on behalf of a group of other delegations that in order to enable UNCTAD to continue the Programme's activities, the Programme's resources from the regular budget should be restored. In this respect, the delegation urged the Commission to recommend to the General Assembly the re-establishing of regular budget funds in UNCTAD for the activities of the Programme and the reinstating of the resources originally allocated for the biennium 1994-1995. At the same time, it was recommended that the Commission should urge that extrabudgetary resources for the technical assistance work be augmented.

13. With regard to future institutional arrangements, several delegations stressed that the work of the Commission should be integrated into the Trade and Development Board framework with a view to there being provided a body to promote the exchange of views among Governments, non-governmental organizations, the business community and trade unions on issues relating to transnational

corporations and foreign direct investment while responding to the need for more input from the private sector as exemplified by the experience of the Ad Hoc Working Group on Investment and Financial Flows; Non-debt-creating Finance for Development; New Mechanisms for Increasing Investment and Financial Flows; to provide guidance to research activities and programmes; and to oversee technical assistance to interested Governments in establishing a more attractive legal framework for foreign direct investment. With respect to the framework for foreign direct investment, one delegation observed that at the same time, the Division should avoid becoming a global management consultant for developing countries. At the same time, all delegations expressed support for the continued role of the Division on Transnational Corporations and Investment as the focal point for research and technical assistance in the area of foreign direct investment.

14. With respect to exchange of information, one delegation, speaking also in its capacity of chairing the Ad Hoc Working Group on Investment and Financial Flows; Non-debt-creating Finance for Development; New Mechanisms for Increasing Investment and Financial Flows, reported on the work of the Ad Hoc Working Group, whose final report had been made available during the meeting. The delegation reported that the essential objective of the Ad Hoc Working Group was to explore and analyse ways to promote flows of non-debt-creating financial flows (foreign direct investment flows, portfolio equity investment flows and new financing via built-operate-transfer (BOT) undertakings) to developing countries and that the work of the Ad Hoc Working Group was intended to cover exchanging country experiences, determining whether a convergence of views on these issues was possible and identifying domains for technical assistance in this area. The delegation stressed that in the seminar-type meetings of the Ad Hoc Working Group (involving also non-governmental participation, which according to the delegation stimulated more informal and more focused discussions among delegations), a number of country case-studies on the role of foreign direct investment had been discussed that focused on the experiences and expectations of host countries and that also looked at the question of motivation for foreign direct investment. Also factors determining the flow of portfolio investment (the concept of emerging markets' attracting increasing flows from developed countries) as well as the policy issues arising from portfolio flows (in other words, the role and functioning of stock markets, and their volatility and what could be done about it) and the relatively new area of BOT financing had been elaborated upon. In an assessment, the delegation stressed that participants in the Ad Hoc Working Group had found the exchange of information on these issues among country delegations, and participants from the private sector, academia and international organizations such as the United Nations Industrial Development Organization (UNIDO) and the World Bank, extremely useful and successful.

15. Several delegations acknowledged the relevance of the experience of the Ad Hoc Working Group for the deliberations of the Commission, in particular on the issue of non-debt-creating financial flows to developing countries. Some delegations felt that this particular area should also be strengthened in the future work programme of the Commission. Several delegations also acknowledged the usefulness of the tripartite approach involving representatives of the private sector (including trade unions) as chosen by the Ad Hoc Working Group and urged that approach to be strengthened in the future work programme of the Commission.

16. With reference to the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, a number of delegations recognized the worthwhile substantive work undertaken by the Group during its

twelfth session and reaffirmed the importance of global harmonization of accounting standards and reporting requirements. It was noted that countries with transitional economies could experience considerable difficulties with the formulation of appropriate accounting standards, valuation particularly during periods of high inflation and throughout the privatization process, and the development of auditing standards and methodologies. Additionally, a number of delegates expressed their appreciation of the technical assistance provided by the Accounting Section.

Action taken by the Commission

17. At the 10th meeting, on 9 May 1994, the Chairman of the Commission introduced and orally revised a draft resolution (E/C.10/1994/L.3) entitled "Integration of the Commission on Transnational Corporations into the institutional machinery of the United Nations Conference on Trade and Development".

18. At the same meeting, the Commission approved the draft resolution for submission to the Economic and Social Council (see chap. I, sect. A, draft resolution).

19. Before the draft resolution was approved, statements were made by the representatives of Algeria, Bulgaria and Mexico. After the draft resolution was approved, the representative of the Russian Federation made a statement.

Chapter VIII

QUESTION OF EXPERT ADVISERS

1. The Commission considered item 9 of its agenda at the 12th meeting, on 11 May 1994. It had before it the following document: Note by the UNCTAD secretariat on the question of expert advisers (E/C.10/1994/13 and Add.1).

2. Delegations observed that the group of independent experts, created to assist the Commission and the Secretariat by providing advice on matters under consideration, constituted a unique feature of the Commission. In that way, the multidisciplinary expertise of the Commission was enhanced. The current group of expert advisers had contributed in significant ways to identifying new issues in the field of international investment.

3. Delegations recognized the need for the continuing participation of expert advisers in the work of the Commission, selected on a wide geographical and professional basis, particularly from trade unions, business, public interest groups and universities, and chosen from among all countries. At the same time, it was felt that the modalities for the selection of expert advisers, decided by the Commission at its second session, could be improved upon, in order to ensure their more effective contribution and more regular attendance. In this connection, the modalities for involvement of experts in the UNCTAD Ad Hoc Working Group on Investment and Financial Flows were considered relevant. Those modalities allowed for more flexible, issue-oriented participation of experts according to the particular requirements of a specific meeting agenda. It was also felt that Commission members should have the opportunity of providing the Secretariat with the names of relevant experts.

Action taken by the Commission

4. The Commission thanked the retiring expert advisers for their valuable contribution and decided that, in the future, expert advisers should be invited by the Director of the Division on Transnational Corporations and Investment, bearing in mind the suggestions of Commission members, to assist the Commission, as needed, on an ad hoc basis, to be determined according to the specialized expertise required by the specific topics to be discussed. Expert advisers should continue to participate in their private consultative capacity, with their travel costs provided within the existing resources appropriated for this purpose. Expert advisers should also continue to be selected on a wide geographical and professional basis, particularly, as appropriate, from trade unions, businesses, public interest groups and universities, and chosen from among all countries.

Chapter IX

PROVISIONAL AGENDA AND DOCUMENTATION FOR THE TWENTY-FIRST SESSION OF THE COMMISSION

1. The Commission considered item 10 of its agenda at the 12th meeting on 11 May 1994.

2. The Deputy to the Secretary-General of UNCTAD and Director-in-charge of the Division on Transnational Corporations and Investments, UNCTAD, introduced and orally revised the draft provisional agenda for the twenty-first session, as contained in document E/C.10/1994/L.2.

3. At the same meeting, the Commission approved the provisional agenda for its twenty-first session, as orally revised, for submission to the Economic and Social Council (see chap. I, sect. B, draft decision).

Chapter X

ADOPTION OF THE REPORT OF THE COMMISSION ON ITS TWENTIETH SESSION

1. At the 12th meeting, on 11 May 1994, the Rapporteur introduced and orally revised the draft report of the Commission on its twentieth session (E/C.10/1994/L.1 and Add.1-7).

2. Following statements by the representatives of the United States of America and the Netherlands, the Commission adopted its report, as orally revised and amended during the discussion.

Chapter XI

ORGANIZATION OF THE SESSION

A. Opening and duration of the session

1. The Commission on Transnational Corporations held its twentieth session at the United Nations Office at Geneva, from 2 to 11 May 1994. The Commission held 12 meetings (1st to 10th).

2. The session was opened by the temporary Chairman, Mr. Faizullah Khilji (Pakistan).

3. The Deputy to the Secretary-General of the United Nations Conference on Trade and Development and Officer-in-Charge of the United Nations Conference on Trade and Development made an opening statement.

B. Attendance

4. The following States members of the Commission attended the session: Algeria, Argentina, Bangladesh, Belarus, Bulgaria, China, Czech Republic, Democratic People's Republic of Korea, France, Gabon, Germany, Indonesia, Italy, Jamaica, Japan, Malaysia, Mexico, Netherlands, Pakistan, Panama, Paraguay, Romania, Russian Federation, Sudan, Sweden, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Zambia and Zimbabwe.

5. The following expert advisers attended the session: Lilia Bautista (Philippines), Duncan Campbell (United States of America), Antonio Colombo (Italy), Roger Decosterd (Switzerland), Peter Frerk (Germany), Ivan Ivanov (Russian Federation), Gösta Karlsson (Sweden), Sanjaya Lall (India), Lim Kee Ming (Singapore), Sylvia Ostry (Canada), Rudolf A. Oswald (United States of America), Edward J. Saperstein (United States of America), Osvaldo Sunkel (Chile), and Sun Weiyan (China).

6. The following experts attended the session: Mr. Abbate (International Labour Organization, Switzerland), John H. Dunning (Rutgers University, United States of America), Mr. Ley (Organisation for Economic Cooperation and Development, France) and Mr. Otter (General Agreement on Tariffs and Trade, Switzerland).

7. The following States Members of the United Nations attended the session: Australia, Austria, Brazil, Cameroon, Colombia, Cuba, Denmark, Ecuador, Egypt, Finland, Greece, Hungary, India, Madagascar, Philippines, Poland, Portugal, Spain, Senegal, Turkey and Ukraine.

8. The following regional commissions were represented: Economic Commission for Africa, Economic Commission for Latin America and the Caribbean, Economic and Social Commission for Asia and the Pacific and Economic and Social Commission for Western Asia.

9. The following specialized agencies and related organizations were represented: International Labour Organization and General Agreement on Tariffs and Trade.

10. The following intergovernmental organization was represented: Organisation for Economic Cooperation and Development.

11. The following non-governmental organizations in consultative status with the Economic and Social Council, category I, were represented: International Council of Voluntary Agencies, International Organization of Consumers Unions, International Organisation of Employers and World Federation of United Nations Associations.

C. Election of officers

12. At the 1st meeting, on 2 May 1994, the Commission elected the following officers by acclamation:

Chairman: Marino Baldi (Switzerland)

Vice-Chairpersons: Lourdes Vallarino (Panama)
Rakovski Lashev (Bulgaria)

13. At the same meeting, the Commission decided to postpone the election of the remaining Vice-Chairman and the Rapporteur to a later meeting.

14. At the 4th and 11th meetings, on 4 and 10 May 1994, the Commission elected Taous Feroukhi (Algeria) Vice-Chairperson and Prianti Gagarin Singgih (Indonesia) Rapporteur by acclamation.

D. Adoption of the agenda and other organizational matters

15. At the 1st meeting, on 2 May 1994, the Commission adopted the provisional agenda contained in document E/C.10/1994/1. The agenda was as follows:

1. Election of officers.
2. Adoption of the agenda and other organizational matters.
3. Transnational corporations in the world economy and trends in foreign direct investment in developing countries in particular, including the interrelationship of investment, trade, technology and development.
4. Role of transnational corporations in services.
5. International arrangements and agreements relating to foreign direct investment and transnational corporations, including guidelines and other instruments.
6. Country and regional experiences in attracting foreign direct investment for development.
7. Experience gained in technical cooperation relating to foreign direct investment and transnational corporations.
8. Implementation of the programme on transnational corporations and consideration of future activities of the Commission.
9. Question of expert advisers.

10. Provisional agenda for the twenty-first session of the Commission.

11. Adoption of the report of the Commission on its twentieth session.

E. Documentation

16. The documents before the Commission at its twentieth session are listed in the annex to the present report.

Annex

DOCUMENTS BEFORE THE COMMISSION AT ITS TWENTIETH SESSION

Document symbol	Agenda item	Title or description
E/C.10/1994/1	2	Provisional agenda
E/C.10/1994/2	3	Report by the UNCTAD secretariat on trends in foreign direct investment
E/C.10/1994/3	3	Report by the UNCTAD secretariat on transnational corporations and employment
E/C.10/1994/4	4	Report by the UNCTAD secretariat on the expansion of foreign direct investment and trade in services
E/C.10/1994/5	6	Report by the UNCTAD secretariat on foreign direct investment in Africa
E/C.10/1994/6 and Corr.1	6	Report by the UNCTAD secretariat on foreign direct investment to the least developed countries and other developing countries outside Africa
E/C.10/1994/7	6	Report by the UNCTAD secretariat on the exchange of information on foreign direct investment
E/C.10/1994/8	7	Report by the UNCTAD secretariat on technical cooperation activities
E/C.10/1994/9	7	Report by the UNCTAD secretariat on entrepreneurship and enterprise development
E/C.10/1994/10	8	Report by the UNCTAD secretariat on the activities of the Programme on Transnational Corporations
E/C.10/1994/11	8	Report by the UNCTAD secretariat on technical assistance for a new South Africa

Document symbol	Agenda item	Title or description
E/C.10/1993/12	8	Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its eleventh session
E/C.10/1994/12	8	Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its twelfth session
E/C.10/1994/13	8	Note by the UNCTAD secretariat on the question of expert advisers
E/C.10/1994/L.1 and Add.1-7	11	Draft report of the Commission
E/C.10/1994/L.2	10	Provisional agenda for the twenty-first session of the Commission
E/C.10/1994/L.3	8	Draft resolution submitted by the Chairman of the Commission